UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,761	02/10/2005	Klaus Haegele	3926.103	6672

30448 7590 10/26/2007
AKERMAN SENTERFITT
P.O. BOX 3188
WEST PALM BEACH, FL 33402-3188

EXAMINER	
OLSZEWSKI, JOHN	
ART UNIT	**PAPER NUMBER**
3618	

MAIL DATE	DELIVERY MODE
10/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/506,761	HAEGELE ET AL.	
	Examiner	Art Unit	
	John R. Olszewski	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 September 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *17 September 2007* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *17 September 2007*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 1-4, 12-13, 15-16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over von der Ohe et al. (US 4,453,740).

With regards to claim 1, von der Ohe et al. discloses:

- An internal combustion engine (Column 1, Lines 28-30)
- An axle carrier on which the engine is mounted (Figure 1)
- Characterized in that wherein the axle carrier has on its top side at least one protective lining
    - Examiner takes official notice that it is old and well known in the art to paint and/or undercoat an axle carrier, as such painting or undercoating provides a protective lining, protecting the axle carrier from corrosion as

well as many other threats to an axle carrier. Therefore it would have been obvious to paint and/or undercoat the axle carrier of von der Ohe et al.

- The lining is a material provided with heat-insulating properties
    - Examiner takes official notice that it is old and well known in the art to paint and/or undercoat an axle carrier, as such painting or undercoating provides heat-insulating properties as opposed to a bare metal surface. Therefore it would have been obvious to paint and/or undercoat the axle carrier of von der Ohe et al.

With regards to claim 3, von der Ohe et al. discloses:

- The material of the lining has sound-insulating properties
    - Examiner takes official notice that it is old and well known in the art to paint and/or undercoat an axle carrier, as such painting or undercoating provides sound-insulating properties as opposed to a bare metal surface. Therefore it would have been obvious to paint and/or undercoat the axle carrier of von der Ohe et al.

With regards to claim 4, von der Ohe et al. discloses:

- The material of the lining comprises an elastomer-modified thermoplastic
    - Examiner takes official notice that it is old and well known in the art to undercoat an axle carrier, as such undercoating is well-known to be a thermoplastic. Therefore it would have been obvious to paint and/or undercoat the axle carrier of von der Ohe et al.

With regards to claim 12, von der Ohe et al. discloses:

- The two longitudinal sides of the axle carrier extending parallel to the vehicle longitudinal axis, are fully covered by the lining with the exception of the fastening points, for fastening to the longitudinal member, and the engine mount
    - Examiner takes official notice that it is old and well known in the art to paint and/or undercoat an axle carrier, as such painting or undercoating provides a lining that can be placed on any portion desirable, and can be left off of portions in which a lining is not desired. Therefore it would have been obvious to paint and/or undercoat the axle carrier of von der Ohe et al.

With regards to claim 13, von der Ohe et al. discloses:

- The two lining portions covering the longitudinal sides of the axle carrier are joined together in such a way that they form a single component, the connecting portions fully covering the transverse bridges of the axle carrier, which join its longitudinal sides
    - Examiner takes official notice that it is old and well known in the art to paint and/or undercoat an axle carrier, as such painting or undercoating provides a single unified coating over all of the surfaces chosen to be covered by said lining. Therefore it would have been obvious to paint and/or undercoat the axle carrier of von der Ohe et al.

With regards to claim 15, von der Ohe et al. discloses:

- The lining is formed by a coating of the axle carrier

- Examiner takes official notice that it is old and well known in the art to paint and/or undercoat an axle carrier, as such painting or undercoating is done by coating the axle carrier with said paint or undercoating. Therefore it would have been obvious to paint and/or undercoat the axle carrier of von der Ohe et al.

With regards to claim 16, von der Ohe et al. discloses:

- The lining is of skin-like configuration conforming to the contour of the top side of the axle carrier
  - Examiner takes official notice that it is old and well known in the art to paint and/or undercoat an axle carrier, as such painting or undercoating conforms to the surface to which it is applied. Therefore it would have been obvious to paint and/or undercoat the axle carrier of von der Ohe et al.

With regards to claim 19, von der Ohe et al. discloses:

- The material of the lining comprises polyamide or polyurethane
  - Examiner takes official notice that it is old and well known in the art to paint and/or undercoat an axle carrier, as such painting or undercoating are commonly composed of a polyamide or polyurethane. Therefore it would have been obvious to paint and/or undercoat the axle carrier of von der Ohe et al.

2. Claims 1-3, 5-14, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over von der Ohe et al. (US 4,453,740) in view of Illbruck et al. (US 5,633,067).

With regards to claim 1, von der Ohe et al. discloses:

- An internal combustion engine (Column 1, Lines 28-30)
- An axle carrier on which the engine is mounted (Figure 1)

With regards to claim 1, von der Ohe et al. lacks, but Illbruck et al. teaches:

- Characterized in that wherein the axle carrier has on its top side at least one protective lining (Figure 1, Item 1)
    - This reference states that the lining is to be used on an engine compartment wall, the top surface of the axle carrier is a wall

    Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von der Ohe et al. in order to provide protection to the axle carrier from anything directly dripping or falling on the axle carrier.
- The lining is a material provided with heat-insulating properties (Column 1, Lines 39-45)
    - The lining is composed of foam and plastic, foam is very well-known for its heat-insulating properties

    Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von

der Ohe et al. in order to provide a heat-insulating layer, to retain heat in the engine bay.

With regards to claim 3, von der Ohe et al. lacks, but Illbruck et al. teaches:

- The material of the lining has sound-insulating properties (Column 1, Lines 39-45)

Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von der Ohe et al. in order to provide a sound-insulating layer, to retain heat in the engine bay.

With regards to claim 5, von der Ohe et al. lacks, but Illbruck et al. teaches:

- The material of the lining comprises two interconnected plastics, the one plastic exhibiting sound-insulating properties and the other plastic exhibiting heat-insulating properties (Figure 2, Item 5)
    - As is clearly illustrated one can see that the two layers of plastic connect on the left side of the illustrated lining.

Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von der Ohe et al. in order to provide two interconnected plastics that exhibit different properties.

With regards to claim 6, von der Ohe et al. lacks, but Illbruck et al. teaches:

- The plastic having the heat-insulating properties is disposed above the plastic having the sound-insulating properties (Figure 2, Item 5)

- The plastic that is on the upper surface will have more of an impact on the heat-insulating properties while the lower layer of plastic aids more to the sound-insulating aspect because the sound is what will travel further through the lining, while the heat will be retained by the upper non-porous sheet of plastic.

Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von der Ohe et al. in order to provide two interconnected plastics that exhibit different properties.

With regards to claim 7, von der Ohe et al. lacks, but Illbruck et al. teaches:

- The lining covers a track control arm opening in the axle carrier (Figure 1, Item 1)

Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von der Ohe et al. in order to provide a lining that covers a track control arm opening so that heat and sound are further retained in the engine compartment.

With regards to claim 8, von der Ohe et al. lacks, but Illbruck et al. teaches:

- The lining covers a spring control arm opening in the axle carrier (Figure 1, Item 1)

Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von der Ohe et al. in order to provide a lining that covers a spring control arm opening so that heat and sound are further retained in the engine compartment.

With regards to claim 9, von der Ohe et al. lacks, but Illbruck et al. teaches:

- The lining covers an interspace between the axle carrier and a longitudinal member of the vehicle to which the axle carrier is fastened (Figure 1, Item 1)

Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von der Ohe et al. in order to provide a lining that covers a spring control arm opening so that heat and sound are further retained in the engine compartment.

With regards to claim 10, von der Ohe et al. lacks, but Illbruck et al. teaches:

- The lining covers a bearing of the axle carrier for an axle stabilizer (Figure 1, Item 1)

Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von der Ohe et al. in order to provide a lining that covers a a bearing of the axle carrier for an axle stabilizer so that excess heat is kept away from the bearing.

With regards to claim 11, von der Ohe et al. lacks, but Illbruck et al. teaches:

- The linings of the individual cover points are joined together in one piece (Figure 2, Item 5)
    - Both linings are joined together, as is clearly illustrated in the left of Figure 2)

Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von

der Ohe et al. in order to provide a lining that is joined together as one piece, to simplify the installation of said lining.

With regards to claim 12, von der Ohe et al. lacks, but Illbruck et al. teaches:

- The two longitudinal sides of the axle carrier extending parallel to the vehicle longitudinal axis, are fully covered by the lining with the exception of the fastening points, for fastening to the longitudinal member, and the engine mount (Figure 1, Item 1)

Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von der Ohe et al. in order to provide a lining that covers specific areas of the axle carrier, while not covering other parts, so as to make it easier to install the axle carrier, and to not create intereference problems in the engine mount area of the fastening point areas.

With regards to claim 13, von der Ohe et al. lacks, but Illbruck et al. teaches:

- The two lining portions covering the longitudinal sides of the axle carrier are joined together in such a way that they form a single component, the connecting portions fully covering the transverse bridges of the axle carrier, which join its longitudinal sides

Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von der Ohe et al. in order to provide a lining that is formed as a single component, in order to keep down manufacturing costs.

With regards to claim 14, von der Ohe et al. lacks, but Illbruck et al. teaches:

- The lining, with the exception of the fastening points for fastening the lining to the axle carrier, is distanced from the latter by an air gap (Figure 2, Item 7)

Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von der Ohe et al. in order to provide a lining that has an air gap between the lining and the carrier so that other items would have space to be mounted to said axle carrier, for example, brake lines, or wire looms.

With regards to claim 16, von der Ohe et al. lacks, but Illbruck et al. teaches:

- The lining is of skin-like configuration conforming to the contour of the top side of the axle carrier (Figure 1, Item 1)

Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von der Ohe et al. in order to provide a lining that is skin-like in order to contour to the shape of the axle carrier, so that it is easier to work with and around.

With regards to claim 17, von der Ohe et al. lacks, but Illbruck et al. teaches:

- Air chambers are formed on the top side of the lining (Figure 1)

Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von der Ohe et al. in order to provide a lining that has air chambers formed on the top side, specifically between the engine and the lining in order to provide breathing

room around the motor, via which the motor can get the intake air need in order to run properly.

With regards to claim 18, von der Ohe et al. lacks, but Illbruck et al. teaches:

- At points of covered openings in the axle carrier, on a circular surface, the lining is provided with diametrical slots, with slotted leaves which are hereupon formed being of resiliently elastic configuration
    - It is well-known in the art to make use of this type of slot in order to fasten one item to another, and plastic is well-known to be resiliently elastic.

Therefore it would have been obvious to one of ordinary skill in the art to take the teachings of Illbruck et al. and incorporate them into the invention of von der Ohe et al. in order to provide a lining with diametrical slots so that the cover is more flexible and capable of being penetrated without compromising the effectiveness of the lining.

Response to Arguments

3. Applicant's arguments filed on the 17th of September 2006 have been fully considered but they are not persuasive.

With regards to applicant's arguments directed to examiner's taking of official notice:

- Examiner has cited a reference, Miller (US 3,434,851), on the 892 Form, in order to support the examiner's arguments of official notice. This piece of art discloses that it is very old and well known to undercoat a vehicle, which includes a vehicle's subframe/axle carrier.

With regards to applicant's arguments directed to the combination of old elements:

- The same benefits of sound deadening and heat insulation from placing this lining on a wall of the engine compartment, would be obvious to one of routine skill in the art to use on an axle carrier in order to obtain the same results.
- Additionally, the lining of Illbruck while its purpose is to be sound absorbing, it would be obvious to one of routine skill in the art that this would also provide heat absorbing properties, and the protection of the axle carrier from corrosion is an ***added benefit*** of the lining

Conclusion

4. **Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Olszewski whose telephone number is 571-272-2706.** The examiner can normally be reached on M-Th 5:30AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on 571-272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

10/16/2007

JRO

CHRISTOPHER P. ELLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600